KHOR SEOW KEE

v.

BOON HOCK SAWMILL SDN. BHD.

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[CIVIL SUIT NO. 12-28-92 (92)]
1 OCTOBER 1993

PRACTICE AND PROCEDURE: Transfer of proceedings - Claim on guarantee and indemnity letter given to respondent to give credit and goods to third party - Question of proper and convenient forum - Constitution and territorial jurisdiction of Sessions Court - Plaintiff filed action in Sessions Court, Taiping - Defendant applies for proceedings to be transferred to Sessions Court, Bukit Mertajam - Section 2 of Third Schedule of Subordinate Courts Act 1948 (Act 92), s. 3 Courts of Judicature Act 1964.

This was an appeal against the decision of the Sessions Court, Taiping which dismissed the defendant's application for the transfer of the civil case pending in the Sessions Court, Taiping, to the Sessions Court, Bukit Mertajam.

Held:

[1] As the appellant resides and carries on his business in Bukit Mertajam, Province Wellesley, the matter is therefore within the local jurisdiction of the Sessions Court in Bukit Mertajam. Consequently, the matter is within the jurisdictional purview of the High Court in Penang.

[2] The appellant is entitled to apply under s. 2 of the Third Schedule of the Subordinate Courts Act 1948 to transfer the case to the Sessions Court, Bukit Mertajam, Province Wellesley.

[3] The appeal was allowed with costs. The case registered in the Sessions Court, Taiping, Perak was ordered to be transferred forthwith to the Sessions Court, Bukit Mertajam, Province Wellesley.

[Appeal allowed with costs].

Case referred to:

Tung Lian Enterprise v. Poly Trading Company [1993] 4 CLJ 189 ***(refd)***

Legislation referred to:

Courts of Judicature Act 1964, s. 3
Subordinate Courts Act 1948, s. 2 of the Third Schedule

For the plaintiff - K.N. Cheah; M/s. Choong Yik Son & Robiha
For the defendant - Yeap; M/s. Yeap & Co.

JUDGMENT

Haji Abdul Malik bin Haji Ishak JC:

The appellant filed an application for a transfer of a civil case pending in the Sessions Court, Taiping, Perak to the Sessions Court, Bukit Mertajam, Province Wellesley. The Sessions Court, Taiping, Perak dismissed the appellant's application with costs. It is from this decision that the appeal before me now lies.

The brief facts are as follows. On 18 December 1985, the appellant executed a continuing guarantee and indemnity letter in favour of the respondent in consideration of the respondent's agreeing to give credit and goods to Chuan Huat Chan and Changling Trading Company to the limit and extent of RM180,000. Changling Trading Company defaulted in settling the sum of RM59,203.35 sen and consequently, the respondent filed an action against the appellant in the Sessions Court, Taiping, Perak to recover the amount owed.

The addresses of Chuan Huat Chan, Changling Trading Company and the appellant were listed as No. 235, Jalan Persiaran Kuari, Taman Kuari, Bukit Mertajam, Province Wellesley in the continuing guarantee and indemnity letter and, consequently, it was argued by the learned Counsel for the appellant that the right forum would be the Sessions Court, Bukit Mertajam, Province Wellesley.

On the other hand, the respondent through Ng Eow Siah, the director of the respondent's company, affirmed an affidavit dated 4 August 1992 and averred that the continuing guarantee and indemnity letter was signed in Taiping, Perak before an advocate and solicitor and with some force, it was argued that the cause of action arose in Taiping and that the proper or convenient forum would be the Sessions Court, Taiping, Perak.

In considering the present appeal, I need to address myself on the question of the local jurisdiction of the Sessions Court. The Subordinate Courts Act 1948 (Act 92) ("the SCA") sets out the constitution and territorial jurisdiction of the Sessions Court. It is quite obvious that the Sessions Court has jurisdiction to hear and determine any civil or criminal cause or matter arising **within the local jurisdiction assigned**

to it or, if no such local limits have been assigned, arising in any part of the local jurisdiction of the respective High Court.

Section 3 of the Courts of Judicature Act 1964 (Act 91) ("the CJA") defines the term "High Court" to mean the High Court in Malaya and the High Court in Borneo. Again, under s. 3 of the CJA, local jurisdiction means "in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu" and "in the case of the High Court in Borneo, the territory comprised in the Borneo States, namely, Sabah and Sarawak."

On perusal of the SCA and the CJA, it is clear that the Sessions Courts can exercise their functions on any cause or matter arising within their local jurisdiction. In like manner, the High Courts can exercise their local jurisdiction for their respective states or territory. Since the appellant resides and carries on his business in Bukit Mertajam, Province Wellesley, the matter is therefore within the local jurisdiction of the Sessions Court in Bukit Mertajam, Province Wellesley and consequently, within the jurisdictional purview of the High Court in Penang. The appellant is entitled to apply under s. 2 of the Third Schedule of the SCA to transfer the case to the Sessions Court, Bukit Mertajam, Province Wellesley. A liberal approach is adopted in construing s. 2 of the Third Schedule of the SCA (*Tung Lian Enterprise v. Poly Trading Company* [1993] 4 CLJ 189.

The legislature in creating a branch of the High Court in Malaya in each State, must have thought of bringing the High Court closer to the rakyat. Easy accessibility of the High Court would lessen the inconvenience of travelling (the amount of costs would not outweigh the inconvenience caused) and the incurring expense that would flow from it. This would, in turn, facilitate the disposal of cases and ease the backlog to a certain extent. This argument would likewise apply, with equal force, to the Sessions Court.

For the reasons adumbrated above, the appeal is allowed with costs. The case registered in the Sessions Court, Taiping, Perak is to be transferred forthwith to the Sessions Court, Bukit Mertajam, Province Wellesley.

Appeal allowed.

LANS KOPERAL CHELLAPAN A/L KANTASAMY

v.

MEJAR WAN GHAZALI BIN WAN DIN & 2 ORS.

HIGH COURT, TAIPING
DATO' HAJI ABDUL MALIK BIN HAJI ISHAK JC
[ORIGINATING SUMMONS NO. 25-11-92 (T)]
26 SEPTEMBER 1993

ADMINISTRATIVE LAW: Certiorari - Decision of Court-martial - Leave to quash decision - Application for leave to be made ex-parte - To show prima facie application is not frivolous or vexatious and there is some substance in grounds - Whether trend of cases tend to show a liberal approach towards judicial review - Order 53 r. 1(1)(2) RHC 1980.

This is an application for leave for an order of *certiorari* to quash the decision of the court-martial delivered on 21 August 1993.

Held:

[1] The applicant has successfully showed *prima facie* that his application is not frivolous or vexatious and there are sufficient grounds, without embarking on the substantial merits of the case for leave to be granted.

[2] Consequently, all the proceedings and actions made in pursuance of the court-martial was ordered to be stayed and further, the respondents were ordered to supply a copy of the record of proceedings to the applicant.

[Leave for order of certiorari granted].

Cases referred to:

Association of Bank Officers, Peninsular Malaysia v. Malayan Commercial Banks Association [1990] 2 CLJ 734 / [1990] 3 MLJ 228 SC ***(foll)***

Government of Malaysia & Anor. v. Jagdis Singh [1987] CLJ 451 / [1987] 2 MLJ 185 SC ***(not foll)***

Haji Laugan Tarki Bin Mohd. Noor v. Mahkamah Anak Negeri Penampang [1988] 2 MLJ 85 SC ***(not foll)***

Lai Cheng Cheong v. Sowaratnam [1983] 2 CLJ 3 / [1983] 2 MLJ 113 FC ***(foll)***

Legislation referred to:

Rules of the High Court 1980, O. 53 r. 1(1)(2)

For the applicant - Darshan Singh; M/s. Darshan Singh & Co.

For the respondents - Fazillah Begum bte. Abdul Ghani, FC